

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KURT ANGELONE,
Plaintiff,
v.
MICHAEL FURSI, *et al.*,
Defendants

Case No. C07-5538RJB-KLS

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

This matter comes before the Court on the Report and Recommendation of U.S. Magistrate Judge Karen L. Strombom. Dkt. 47. The Court has reviewed the Report and Recommendation (Dkt. 47), Plaintiff's motion for a temporary restraining order (Dkt. 28), second motion for a temporary restraining order (Dkt. 32), amended motion for a temporary restraining order and other requested relief (Dkt. 37), motion for partial dismissal of his motions for temporary restraining orders (Dkt. 40), and objections to the Report and Recommendation (Dkt. 61) and the remaining record.

The Report and Recommendation should be adopted. Plaintiff appears to no longer be seeking preliminary injunctive relief concerning the legal property he claims was confiscated, as that property has been returned. Moreover, Plaintiff has failed to show that this case represents the kind of exceptional circumstances which would warrant appointment of counsel pursuant to 28 U.S.C. § 1915 (e)(1).

To the extent that Plaintiff moves for default against Defendants Khursid and Figueroa in his objections (Dkt. 61, at 11-12), his motion should be denied. Local Fed. R. Civ. P. 7 provides that a motion shall include a caption and a noting date. Plaintiff failed to provide make a notation in the caption

1 that he was making such a motion, nor did he attempt to note the motion. Moreover, the record indicates
2 that Defendant Figueroa is being represented by the Washington State Attorney General and has filed an
3 Answer to the Complaint. Dkts. 55 and 56. As to Defendant Khursid, there is no evidence in the record
4 that he has been served. The Notice and Acknowledgment of Receipt of Summons and Complaint by Mail
5 form, which when executed waives the necessity of personal service, is unsigned by Defendant Khursid.
6 Dkt. 49. Plaintiff's motion for the United States Marshall to personally serve Defendant Khursid was
7 denied because he failed to provide an accurate address for Defendant Khursid. Dkt. 54. This Court does
8 not have personal jurisdiction over Defendant Khursid because he has not been personally served. *Mason*
9 *v. Genisco Technology Corp.*, 960 F.2d 849, 853-54 (9th Cir. 1992). A default judgment entered against a
10 person not made a party to the litigation by proper service of process would be void. *Id.* (holding that a
11 person is not bound by a judgment in litigation to which he has not been made a party by service of
12 process). Plaintiff's motion for default against Defendants Khursid and Figueroa should be denied.

13 Accordingly, it is hereby **ORDERED** that:

14 (1) the Magistrate Judge's Report and Recommendation (Dkt. 47) is approved and
15 **ADOPTED**;

16 (2) Plaintiff's motion for a temporary restraining order (Dkt. 28), second motion for a
17 temporary restraining order (Dkt. 32), and amended motion for a temporary restraining
18 order and other requested relief (Dkt. 37) are **DENIED**;

19 (3) Plaintiff's motion for partial dismissal of his motions for temporary restraining orders (Dkt.
20 40) is **GRANTED** to the extent noted in the Report and Recommendation, and **DENIED**
21 with respect to all other requests plaintiff makes therein;

22 (4) Plaintiff's motion for default against Defendants Khursid and Figueroa (Dkt. 61) is
23 **DENIED**; and

24 (5) the Clerk is directed to send copies of this Order to Plaintiff and any other party that has
25 appeared in this action.

1 DATED this 17th day of March, 2008.
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ROBERT J. BRYAN
United States District Judge